

**ASSEMBLY BILL**

**No. 2093**

**Introduced by Assembly Member Karnette**

February 17, 2006

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An act to amend Section 1250 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2093, as introduced, Karnette. Evidence: hearsay exception.

Existing evidence law makes certain evidence inadmissible in court on the basis that it is hearsay, unless that evidence falls within an exception to this rule. Under existing law, evidence of a statement of the declarant's then existing state of mind, emotion, or physical sensation, is not made inadmissible by the hearsay rule when the evidence is offered to prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when it is itself an issue, or, the evidence is offered to prove or explain acts or conduct of the declarant. Existing law also specifies that those provisions do not make admissible evidence of a statement of memory or belief to prove the fact remembered or believed.

This bill would create an exception to the latter provision to allow, in homicide proceedings in which the declarant is the decedent victim, a nontestimonial statement by the decedent declarant expressing fear of a defendant to be admitted as evidence, if it is found to be trustworthy and not substantially more prejudicial than probative, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1250 of the Evidence Code is amended to read:

1250. (a) Subject to Section 1252, evidence of a statement of the declarant's then existing state of mind, emotion, or physical sensation (including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health) is not made inadmissible by the hearsay rule when:

(1) The evidence is offered to prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when it is itself an issue in the action; or

(2) The evidence is offered to prove or explain acts or conduct of the declarant.

(b) This section does not make admissible evidence of a statement of memory or belief to prove the fact remembered or believed, *except in a homicide proceeding in which the declarant is the decedent victim. In such a circumstance, a nontestimonial statement by the decedent declarant expressing fear of a defendant is admissible, if found to be trustworthy and not substantially more prejudicial than probative pursuant to Section 352.*